

Misc. Docket No. 93-0024

IN THE SUPREME COURT OF THE
STATE OF TEXAS

ORDER APPROVING THE INTERNAL OPERATING RULES AND PROCEDURES
OF THE COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE SUPREME COURT OF TEXAS:

WHEREAS, the State Bar of Texas has, by petition filed with the Clerk of this Court on October 13, 1992, 1992, petitioned the Supreme Court of Texas to approve the Internal Operating Rules and Procedures of the Commission for Lawyer Discipline; and

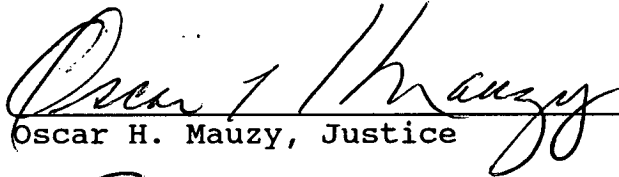
WHEREAS, the proposed rules and procedures, as incorporated in such petition, have been presented to and considered by the Supreme Court of Texas, and the Court is of the opinion that same should be approved as set forth in such petition.

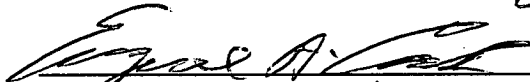
It is therefore ORDERED that the proposed rules and procedures be adopted and that same be published in the Texas Bar Journal as provided in Rule 4.06(H) of the Texas Rules of Disciplinary Procedure.

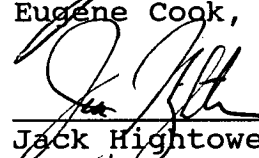
By the Court, en banc, in chambers, on this 20th day of November, 1992.


Thomas R. Phillips
Thomas R. Phillips, Chief Justice

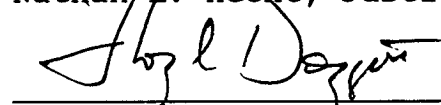
Raul A. Gonzalez
Raul A. Gonzalez, Justice

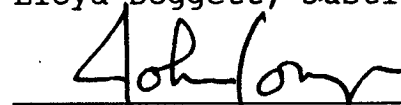

Oscar H. Mauzy, Justice

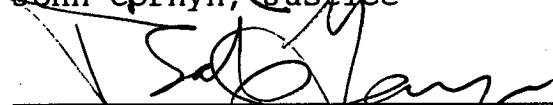

Eugene Cook, Justice


Jack Hightower, Justice


Nathan L. Hecht, Justice


Lloyd Doggett, Justice


John Cornyn, Justice


Bob Gammage, Justice

IN THE SUPREME COURT OF THE
STATE OF TEXAS

PETITION TO APPROVE INTERNAL OPERATING RULES AND PROCEDURES
OF THE COMMISSION FOR LAWYER DISCIPLINE

TO THE HONORABLE SUPREME COURT OF TEXAS:

COMES NOW the State Bar of Texas, by and through the undersigned, and would respectfully represent to the Supreme Court of Texas the following:

I.

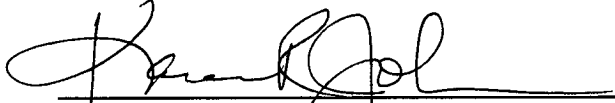
Rule 4.06(H) of the Texas Rules of Disciplinary Procedure provides that the Commission for Lawyer Discipline draft and recommend for adoption to the Board of Directors of the State Bar of Texas internal operating rules and procedures. These rules and procedures, as adopted by the Board of Directors, are to be submitted to the Supreme Court for approval, and after approval, be published in the Texas Bar Journal.

II.

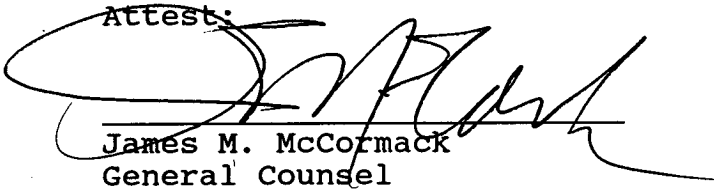
The Board of Directors of the State Bar of Texas, in a regularly called meeting on June 24, 1992, in Corpus Christi, Texas, at which meeting a quorum was present, moved and adopted the Internal Operating Rules and Procedures of the Commission for Lawyer Discipline, as set forth in Appendix "A."

WHEREFORE, the State Bar of Texas respectfully requests the Supreme Court approve the Internal Operating Rules and Procedures of the Commission for Lawyer Discipline, and that same be published in the Texas Bar Journal pursuant to Rule 4.06(H) of the Texas Rules of Disciplinary Procedure.

Respectfully submitted,



Karen R. Johnson
Executive Director

Attest:


James M. McCormack
General Counsel

COMMISSION FOR LAWYER DISCIPLINE

INTERNAL OPERATING RULES AND PROCEDURES

COMMISSION MEMBERSHIP

1.1: COMPOSITION. The Commission for Lawyer Discipline is a permanent committee of the State Bar and is not subject to dissolution by the Board under Article VIII of the State Bar Rules. The Commission is composed of twelve (12) members. Six (6) members shall be attorneys licensed to practice law in the State of Texas and in good standing as members of the State Bar. Six (6) members shall be public members who have, other than as consumers, no interest, direct or indirect, in the practice of law or the profession of law. No member of the Commission may serve as a member of the Commission while he or she is a member of a District Grievance Committee, an officer or Director of the State Bar, an employee of the State Bar, or an officer or director of the Texas Young Lawyers Association; provided, however, the Chairman of the Board of the State Bar shall appoint a Director of the State Bar as an adviser to the Commission and a Director of the State Bar as an alternate adviser to the Commission, and the President of the Texas Young Lawyers Association shall appoint a director of the Texas Young Lawyers Association as an adviser to the Commission. Members of the Commission and its advisers will be compensated for their reasonable, actual, and necessary expenses, and members, but not advisers, will be compensated for their work as determined by the Board to be appropriate.

1.2: APPOINTMENT AND TERMS. Except for initial appointments as set forth in Section 4.03 of the Texas Rules of Disciplinary Procedure, Commission members will serve three (3) year terms unless sooner terminated through disqualification, resignation, or other cause. Terms begin on September 1 of the year and expire on August 31 of the third year thereafter. The lawyer members of the Commission are appointed by the President of the State Bar, subject to the Board's concurrence, no later than June 1 of the year. The public members are appointed by the Supreme Court of Texas no later than June 1 of the year. Members may be removed by the Supreme Court, but only for good cause. Vacancies are to be filled in the same manner as term appointments but are only for the unexpired term of the position vacated. Members of the Commission are not eligible for reappointment to more than one (1) additional three (3) year term.

APPENDIX A

1.3: OATH OF COMMISSION MEMBERS. As soon as possible after appointment, each newly appointed member of the Commission shall take the following oath to be administered by any person authorized by law to administer oaths:

"I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the Commission for Lawyer Discipline, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the Commission for Lawyer Discipline arising from or in connection with each Disciplinary Action and Disciplinary Proceeding unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God."

1.4: CHAIR. The President of the State Bar, subject to the concurrence of the Board, shall annually designate a lawyer member to chair the Commission and another member to serve as vice-chair, each for a one (1) year term.

MEETINGS OF THE COMMISSION

2.1: MEETINGS. The Commission shall meet monthly or at such other times, in such places, and for such periods of time as the business of the Commission requires. Meetings are convened at the call of the Chair. Timely notice of all Commission meetings shall be sent to all members in advance. All meetings shall be posted and conducted in accordance with the requirements of the Texas Open Meetings Act, applicable state law and orders of the Supreme Court of Texas.

2.2: EXECUTIVE SESSIONS. The Commission may meet, as needed, in closed executive session when authorized by the Texas Open Meetings Act, applicable state law or orders of the Supreme Court of Texas. During an executive session, only members of the Commission shall be present in the absence of an invitation to others whose presence is legally permissible.

2.3: CONFERENCE CALLS. The Commission may, at the instance of the Chair, conduct its business, when to do so would not violate the Texas Open Meetings Act, by

conference telephone calls but, in such event, any action taken must be reduced to writing and signed by each participant certifying the accuracy of the written record of action taken.

2.4: **QUORUM.** A simple majority of the then appointed members of the Commission shall constitute a quorum.

2.5: **APPEARANCES.** Interested parties are welcome to attend any public session of the Commission. However, the Commission is not a court or adjudicatory body and, therefore, oral presentations or argument by a Complainant, Respondent or their respective representatives shall not be permitted. However, presentations in writing may be submitted to the Commission through the Chief Disciplinary Counsel.

2.6: **PUBLIC COMMENT.** Public comment shall be included on the agenda of each regularly scheduled meeting of the Commission. The Chair may, as needed, limit the discussion to pertinent subject matter and limit the time permitted for each person wishing to address the Commission.

2.7: **ATTENDANCE.** Members of the Commission are expected to attend all meetings of the Commission. The failure or inability to attend such meetings on a regular basis shall constitute good cause for removal of such member.

2.8: **RULES OF PROCEDURE.** The meetings of the Commission shall be generally conducted pursuant to Roberts Rules of Order. Rulings of the Chair with respect to parliamentary procedure shall be final.

2.9: **AGENDA.** A member of the Commission who desires to have any matter considered by the Commission may request that the Chair place the item on the next Commission agenda, provided that the posting requirements of the Texas Open Meetings Act are observed. If reasonably related to the authority and duties of the Commission, the Chair shall place the item on the next Commission agenda for consideration.

2.10: **MINUTES.** Minutes shall be kept of all Commission proceedings, except that no minutes shall be kept of discussions during closed executive sessions. Minutes shall be prepared within a reasonable time after each Commission meeting. All motions voted on shall be reflected in the minutes. The minutes shall be available for inspection by any person during regular business hours in the Office of the Chief Disciplinary Counsel. The tape record of the Commission's public proceedings shall be available for inspection in accordance with the Texas Open Records Act.

DISQUALIFICATION AND RECUSAL OF COMMISSION MEMBERS

3.1: **DISQUALIFICATION.** No member of the Commission, nor any person associated with a member's firm, shall represent or counsel any Respondent or other

party with respect to any Disciplinary Action or Disciplinary Proceedings within the State of Texas. No member of the Commission shall testify voluntarily in any Disciplinary Action or Disciplinary Proceedings within the State of Texas.

3.2: **RECUSAL.** A member of the Commission shall recuse himself or herself from any discussion and voting in any matter in which the member or any person associated with the member's firm:

- A. Represents or has represented either the Complainant, Respondent or any adverse party in any current or related matter;
- B. Is related within the third degree of affinity or consanguinity to the Complainant, Respondent, any adverse party or any material witness;
- C. Has advised or assisted the Complainant, Respondent or any adverse party in the matter or any other related matter;
- D. Has personal knowledge of material facts related to the matter;
- E. Has a business, professional or other close personal relationship with the Complainant, Respondent, any adverse party or any material witness; or
- F. Knows of any other reason why he or she should not participate in deliberations or voting with respect to the matter.

AUTHORITY TO SPEAK ON BEHALF OF THE COMMISSION

4.1: **SPOKESPERSON.** No member of the Commission or any other person, is authorized to bind the Commission without its specific authorization, except as may be provided for in this policy, the Texas Rules of Disciplinary Procedure, applicable law, or orders of the Supreme Court of Texas. The Chair of the Commission serves as its spokesperson in public statements concerning positions taken by the Commission, its policies, and decisions. The Chair may, as needed, designate another person to serve as spokesperson.

IMPOSITION OF SANCTIONS

5.1: **LIMITATIONS ON THE USE OF PRIVATE REPRIMANDS.** In accordance with Section 81.072(11), Texas Government Code, the Commission adopts the following rules restricting the use of private reprimands by district grievance committees. Private reprimands shall not be utilized if:

- A. A private reprimand has been imposed upon the Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or
- B. The Respondent has previously received two (2) or more private reprimands, whether or not for violations of the same disciplinary rule, within the preceding ten (10) years; or
- C. The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- D. The misconduct has resulted in substantial injury to the client, the public, the legal system or the profession; or
- E. There is likelihood of future misconduct by Respondent; or
- F. The Respondent's misconduct was an intentional violation of the Texas Disciplinary Rules of Professional Conduct or, if applicable, the Texas Code of Professional Conduct; or
- G. A Disciplinary Action has been initiated as a result of such misconduct.

5.2: **SANCTIONS.** An attorney who fails or refuses, absent good cause, to respond to the request of a District Grievance Committee for either information or a response to a complaint may be subject to any appropriate level of sanction for that failure or refusal, even if the underlying complaint is ultimately found by the District Grievance Committee to be without merit.

5.3: **PRIVATE REPRIMANDS.** The Commission has no express authority under the Texas Rules of Disciplinary Procedure to grant private reprimands and, under such Rules, the District Grievance Committee loses its client status not later than twenty (20) days after a Just Cause determination has been made. In order to facilitate the grant of a private reprimand in a case where it is agreed by the Commission, the District Grievance Committee and the Respondent that the same is appropriate, the District Grievance Committee and the Respondent may execute the appropriate documents for private reprimand and, if and when ratified by the Commission, same shall have, for all purposes, the same effect as if the same had been granted while the District Grievance Committee was the client in connection with such matter. No private reprimand shall be granted in violation of Section 5.1 hereof. This procedure is adopted by the Board of Directors of the State Bar of Texas in accordance with the authority given to it in the Preamble of the Texas Rules of Civil Procedure to adopt rules of procedure and administration not inconsistent with the Texas Rules of Disciplinary Procedure.

5.4: **PUBLIC REPRIMAND.** The Commission has no express authority under the Texas Rules of Disciplinary Procedure to grant public reprimands and, under such Rules, the District Grievance Committee loses its client status not later than twenty (20) days after a Just Cause determination has been made. In order to facilitate the grant of a public reprimand in a case where it is agreed by the Commission, the District Grievance Committee and the Respondent that the same is appropriate, the District Grievance Committee and the Respondent may execute the appropriate documents for public reprimand and, if and when ratified by the Commission, same shall have, for all purposes, the same effect as if the same had been granted while the District Grievance Committee was the client in connection with such matter. This ratification procedure shall be unavailable in connection with any proceeding pending in a district court. This procedure is adopted by the Board of Directors of the State Bar of Texas in accordance with the authority given to it in the Preamble of the Texas Rules of Civil Procedure to adopt rules of procedure and administration not inconsistent with the Texas Rules of Disciplinary Procedure.

SPECIAL ASSISTANT DISCIPLINARY COUNSEL PROGRAM

6.1: **PRO BONO ASSISTANCE.** The Commission has adopted a Special Assistant Disciplinary Counsel program to provide experienced trial attorneys, on a pro bono basis, for the prosecution of disciplinary lawsuits. Special Assistant Disciplinary Counsel will be appointed by the Commission to handle specific Disciplinary Actions. Special Assistant Disciplinary Counsel will operate in cooperation with the Chief Disciplinary Counsel's office and will be reimbursed for reasonable litigation-related expenses, but not for their own time or for services provided by their own employees.

RECOVERY OF ATTORNEYS FEES

7.1: **GENERAL POLICY.** The Chief Disciplinary Counsel shall seek, in accordance with Commission policy, the recovery of reasonable attorney's fees and all direct expenses, including court costs, associated with Disciplinary Actions, where the same is permitted by law. An exception to this policy may be granted only with the express consent of the Commission and only in cases where to seek such a recovery would be inequitable under the circumstances.

AUTHORIZATION FOR INTERIM ACTION

8.1: **PRESERVATION OF APPEAL RIGHTS.** The Chief Disciplinary Counsel shall take all actions necessary, including the filing of motions and notices, to preserve the Commission's ability to decide whether or not an appeal should be taken in a particular matter.

SETTLEMENT AUTHORITY

9.1: LIMITATIONS. Settlement authority shall only be extended to the Chief Disciplinary Counsel at a meeting of the Commission after posting notice thereof in accordance with the Texas Open Meetings Act. No offer of settlement received by the Chief Disciplinary Counsel shall justify a continuance in the trial or hearing of any Disciplinary Action unless such offer will be recommended by the Chief Disciplinary Counsel to the Commission for acceptance and justice requires that such offer be considered by the Commission prior to trial or hearing.

DISQUALIFICATION OF FORMER COUNSEL

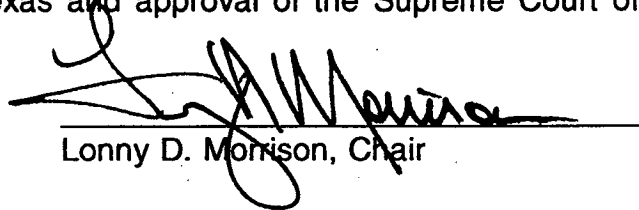
10.1: POLICY. The Commission shall not, except in unusual circumstances, consent to the representation of a Respondent or adverse party in any Disciplinary Action or Disciplinary Proceeding by an attorney who served as Chief Disciplinary Counsel, or as a staff attorney employed by the Chief Disciplinary Counsel, at any time relevant to such Disciplinary Action or Disciplinary Proceedings.

DEFINITIONS

11.1: INCORPORATION. All words used herein that are defined in the Texas Rules of Disciplinary Procedure shall have the same meaning herein as in the Texas Rules of Disciplinary Procedure.

CERTIFICATION

I, the undersigned, as Chairman of the Commission for Lawyer Discipline, certify that the foregoing Internal Operating Rules And Procedures were adopted by the Commission for Lawyer Discipline on June 12, 1992, SUBJECT TO adoption by the Board of Directors of the State Bar of Texas and approval of the Supreme Court of Texas.



Lonny D. Morrison, Chair